

COLEMAN LOSES.

Supreme Court Decides "State Journal" Libel Suit.

Decision of Shawnee County Court Is Affirmed.

BY UNANIMOUS VOTE.

Long and Able Opinion by Justice.

Disbarment Case of Trickett vs. Cooksey to Be Probed.

The supreme court today by unanimous voice, in an opinion written by Justice Burch in the case of C. C. Coleman against P. P. MacLennan, editor and proprietor of the State Journal, affirmed the action in the district court of Shawnee county wherein a jury acquitted the State Journal of libel and refused to assess any damages.

The case was a most important one, involving the right of a newspaper to publish, without malice, the acts of a public official, such as being regarded by the public as important for the public to know.

The original cases were begun in August, 1904.

There were three of them, each for \$15,000, aggregating \$45,000 damages asked for against this paper.

The cases were brought by C. C. Coleman, attorney general, L. L. Dayhoff, superintendent of public instruction and J. R. Burrow, secretary of state. These three, acting as a state school fund commissioners purchased certain Comanche county bonds under various irregular and suspicious circumstances and conditions.

The State Journal severely criticized these officials, who were candidates for re-election, for their action in buying for the school fund what it regarded as tainted securities. The original bonds upon which the ones concerned were based were fraudulent, issued under infamous circumstances. In considering the purchase of the bonds by the state, it was necessary to secure a change in the law, the bonds were purchased and handled with more or less secrecy and in the final transaction State Treasurer Kelly advanced the money from the treasury to the seller pending two weeks' formalities.

The list of opinions handed down today in the case of Coleman against the State Journal, the supreme court today clinches and sustains the verdict of the district court. The attorneys for Mr. MacLennan were P. P. MacLennan, of Atchison, J. G. Waters of Topeka and W. P. Haeckel of Winfield.

The attorneys for Mr. Coleman were his own firm, Coleman & Williams of Clay Center, and Smith & Smith of Topeka and John E. Hessin of Manhattan.

The opinion in full is exhaustive and shows great research, goes into details and quotes and comments freely on many court opinions including one by Judge W. H. Taft in 1893.

The opinion will be printed in full in Monday's issue of this paper. The following is the syllabus, or abstract by the court, which was unanimous in its opinion:

"If the publisher of a newspaper circulated throughout the state publish an article reciting facts and making comment relating to the official conduct and character of a state officer, who is a candidate for re-election, for the sole purpose of giving to the people of the state what he honestly believes to be true and comments freely on the public conduct of the officer, and the whole thing is done in good faith, the publisher is privileged although the matter contained in the article may be untrue in fact and derogatory to the character of the candidate."

"Generally, publication should be no wider than the moral or social duty to publish. If it be designedly or unnecessarily or negligently excessive, privilege is lost. Where a newspaper published primarily for a state constituency have a small circulation elsewhere, it is not deprived of its privilege in the dissemination of state-wide concern because of that fact."

"If on the trial of a suit for libel the jury should find adversely from the evidence that the plaintiff suffered no damages from the publication complained of, it will not be presumed that the defendant was negligent in instructions regarding particular questions in the case not related to that of damages; and the question whether such instructions make the law becomes immaterial because they do not affect the plaintiff's substantial rights."

Employer Must Use Caution.
In reversing the suit of Elizabeth Rudolph against the Atchison, Topeka and Santa Fe railroad company, from Barber county, the supreme court holds that where a method of railroad company has two methods by which his work can be accomplished, one safe and the other dangerous and he adopted the dangerous method and is killed, his widow can not recover damages. Charles T. Rudolph was a brakeman for the Santa Fe railroad, was coupling cars to make up a train at Sharon. All of the cars had automatic couplers and he did not need to go between the cars. But he took another method of making the coupling which put his life in danger. He was killed and his wife brought suit for damages. The lower court gave judgment but the supreme court reversed and held that the method which he could have used that was not dangerous to himself and by which he could have performed his work satisfactorily that the company is not liable for his death.

Murphy Must Serve Sentence.
George A. Murphy was convicted of selling liquor under a city ordinance at Whitita. After he was sentenced to jail the city ordinance was repealed and he contended that he should not serve the jail sentence. He appealed to the supreme court to have the sentence set aside but the court

ON THE GRIDIRON.

Fast Elevens of the East and West Collide Today.

Harvard and Carlisle Battle Will Be Interesting.

INDIANS FAVORITES.

Expect to Excel Opponents in Field and Goal Kicks.

Wisconsin and Minnesota Clash at Minneapolis.

Burial Association Ousted.
Judgment of ouster was rendered by the supreme court against the National Burial association of Kansas, Kan. corporation conducting an alleged fraudulent business in burial insurance. The suit was brought by the state, through the state insurance department. The defendants in the case did not take any evidence or file any briefs, and the court finds that the state has sustained its charge and that the corporation should be ousted from doing business in Kansas.

Rossville Warrants Illegal.
The supreme court holds that the \$1,200 in county warrants issued by Rossville, Shawnee county, to pay the Rossville portion of rebuilding a bridge across the Kansas river are illegal and that the town can not be compelled to pay those warrants. The warrants are now held by the Alma National bank and the suit was brought by the bank to force the town to pay the notes. The Shawnee county district court decided in favor of the bank on a demurrer to the evidence, but the supreme court reverses the decision and orders the lower court to proceed and try the case.

"Sprinkling Law" Invalid.
The "sprinkling law" passed in 1903 and held invalid by the supreme court in the suit brought against the city of Abilene by the Union Pacific railway. This law was designed to authorize city councils to issue bonds to order streets to be sprinkled, and the cost of sprinkling collected from the property owners. The city of Abilene took advantage of this law, and tried to force the Union Pacific to pay its portion of the tax. The Union Pacific refused to pay and the city brought suit. The supreme court holds that the law is invalid and that the city of Abilene cannot collect the tax.

Court Makes Many Reversals.
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Successor to Von Sternburg at Washington Is Selected.

Berlin, Nov. 7.—Count Johann Heinrich von Bernstorff, who recently has represented the German government in Egypt, has been selected by Emperor William to succeed the late Baron Speck von Sternburg as ambassador to America.

Countess von Bernstorff is a daughter of Edward Luckmeyer of New York. The appointment has not yet been made formally, but it is understood that an official announcement will be given out within two or three days.

Count von Bernstorff was assigned lately to Egypt. He was first diplomatic agent and consul general at Cairo, but was raised to the rank of minister plenipotentiary early in 1908. He is the fourth son of Count Albrecht von Bernstorff, who was a distinguished statesman of Bismarck and was born in London in 1862, while his father was German ambassador to the court of St. James. The new ambassador began his diplomatic career in 1889, when he was 27, as attaché at Constantinople. From Turkey he was transferred to the foreign office in Berlin, after which he advanced from one grade to another, serving in Belgrade, Dresden, St. Petersburg and Munich. He was councillor of the embassy and first secretary in London in 1902.

While in England the count came especially under the notice of Emperor William as a result of his work in negotiating the recent years, against Germany. He was up a series of lucid and comprehensive dispatches on the situation. After four years in London he was sent to Cairo. In the German diplomatic service this post is regarded as a stepping stone towards advancement.

Count von Bernstorff, the founder of the colored branch of the family, also had an American wife. He was married in 1891 to Amerika Riedemann, daughter of a prominent family, who was born in 1874.

Count von Bernstorff's daughter, Alexandra, is 20 years of age, and came out socially in Cairo two seasons ago. Her son, Christian, 17 years old, is now at school.

The new ambassador to the United States is a man above middle height, of slight build, with a blonde moustache. His knowledge of English is well high perfect and he is known as a successful after dinner speaker and a witty conversationalist.

The count, who has spent his annual leave in Germany. He attended the wedding of Prince William in Berlin, October 22, and joined his family in Paris the following day. It was his purpose to leave Paris for Cairo November 3, and was presumed here by his friends that he had done so.

It is not probable that the new ambassador will be able to arrange his affairs at Cairo to arrive at Washington before the end of the year.

WISCONSIN THE FAVORITE.
For the first time in several years the University of Wisconsin football team lines up against the Minnesota team in the cup field this year as decided favorites in the betting. Minnesota's crushing defeat at the hands of Chicago last Saturday was largely responsible for this. With an advantage in the line-up and a superior knowledge of the open style of play the Wisconsin players and players were confident of victory.

Princeton and Dartmouth.
New York, Nov. 7.—Princeton and Dartmouth at the Polo grounds today will give New York its only opportunity to see a big football game this season. Both teams are expected to show their full hand and the contest probably will be close and interesting.

Next Saturday evening his chief game of the year, Princeton meeting Yale and Dartmouth meeting Harvard, so the elevens today probably will hold in reserve most of their formations. The weather conditions today promised to be perfect.

Princeton and Dartmouth have not met on the gridiron for two years. In 1906, the men from New Jersey won the game, 12 to 6. Princeton undoubtedly will do their utmost to wipe out this defeat. Secret practice has been largely the order for both teams during the past week and at Princeton has brought out many shifts in the line-up. McFadden going from guard to center and Buckingham coming from the side line to fill McKayden's position. Pfeiffer probably will be sent in at right half for Read, while Dowd will take Bredemus' place at end. Dartmouth has made two changes in its line. He is expected to be directed by the finest quarterback in the big colleges, Fishon, who weighs but 125 pounds and stands five feet three inches. He is nevertheless looked upon as a worthy opponent of the veteran, Dillon, who will lead Princeton.

The teams will play 35 minute halves.

Yale Expects Hard Battle.
New Haven, Conn., Nov. 7.—Yale expects to have a tough proposition with Brown on the gridiron this afternoon. The blue and white in winning will not be scored upon. It is thought that Yale's strength against Brown will be the strength of the line. Brown played at Cambridge last week and the score stood 6 to 2 in favor of the crimson.

TO MAKE ATCHISON DRY.
Atchison, Kan., Nov. 7.—There is going to be an effort here to drive out the saloons.

Intended to close every saloon in town. Mayor King said today. "I will admit now that I have heretofore been handicapped in my efforts to close the joints in Atchison by reason of the fact that I was elected mayor on the 'wet' issue and I have had a hard time in keeping my record straight. I consider my defeat for county treasurer meant that if people here want a 'dry' town and I am going to give it to them if it is in my power."

The determination of Mayor King to close the joints will create a good deal of consternation among some and of course it will be charged that he is tightly drawn. He will have behind him all the lawabiding citizens of Atchison. He certainly will have the open and aggressive support of the state authorities.

TRADE IS BETTER.

Business Helped by Election Results and Weather.

Old Orders Confirmed and New Ones Placed.

AN INCREASE OF TIME.

And Capacity in Many of the Industrial Concerns.

Topeka Bank Clearings Show Increase of 35 Per Cent.

New York, Nov. 7.—Bradstreet's says: Election results and the advent of more seasonable weather in some sections of the country were helpful to trade this week, and except in parts of the south where the holding of cotton interfered, collections also have shown improvement. In wholesale and manufacturing lines the tone of business shows marked improvement. Orders which were conditioned on election results have been confirmed and many new ones placed, the net result being an enlargement of the volume of business at first hands over recently preceding weeks.

Many industrial concerns have announced an increase of capacity and of running time, and sales of pig iron, structural material, cotton goods for spring and reorders for fall and spring wear, shoes and other lines have been enlarged. Practically all pig iron markets were animated this week and the volume of business placed was heavy. Most of the tonnage was booked prior to the election, the result of which appeared to be well assured, and some of it was probably brought up by concessions in prices. However, quotations are now firmer and inquiries for additional tonnage for delivery during the remainder of this year and throughout the first and second quarters of 1909 are numerous.

Copper is higher, partly because of speculation and partly owing to better domestic demand.

There is more doing in the leather and shoe trades.

Wheat failures in the United States for the week ending November 5, show 255 against 241 last week; 226 in the like week of 1907; 146 in 1906; 166 in 1905 and 194 in 1904.

Business failures in Canada for the week number 3 as against 32 last week and 34 in the corresponding week of 1907.

Wheat including flour, exports from the United States and Canada for the week ending November 5, aggregated 4,940,120, against 5,463,714 last week and 5,268,000 the week before last.

For the 19 weeks ending November 5, this year, the exports are 78,654,745 bushels against 78,727,407 in the corresponding period last year.

For the 19 weeks for the week are 812,534 bushels against 196,514 last week and 712,501 in 1907. For the 19 weeks ending November 5, corn exports are 2,221 bushels against 18,672,672 last year.

GONE TO HOT SPRINGS.

President-elect and Mrs. Taft Will Remain There Until Thanksgiving.

Cincinnati, O., Nov. 7.—President-elect W. H. Taft and Fred W. Cather, private secretary, left this city last night at 9:10 o'clock for Hot Springs, Va., where Mr. Taft will remain for rest and recreation until Thanksgiving.

The day had been the quietest for the president-elect of any he has had since election. He had a conference with Myron T. Herrick, but stated afterwards that no matters of significance were discussed. Judge Taft sent this cablegram to Gov. Magoon at Havana:

"Please convey to the family of President Palma my sincere condolence. He was an honored man, a true patriot who understood the value and the responsibilities of liberty and who loved Cuba with all his heart."

The offices of Mr. Taft were dismantled and will be re-established at Hot Springs. While no official announcement has been made it is known upon reliable authority that the president-elect will remain at Hot Springs for many years, will be his secretary to the president succeeding in that position Wm. Loeb, Jr.

It is also stated, may have the position of secretary of the navy in the Taft cabinet, if he so desires. Mr. Carpenter was with Mr. Taft in the Philippines and has been his secretary in the war department.

CORNISH FOUND DEAD.

Was Officially Connected With Nearly All Harriman Enterprises.

Chicago, Nov. 7.—William D. Cornish, of New York, second vice president of the Union Pacific Railway company, and a director in many other corporations, was found dead in the Auditorium annex in this city today. Death apparently was due to heart disease.

Mr. Cornish was a member of the directors of the following corporations: Leavenworth, Kansas & Western railway, the Northern Pacific Terminal company of Oregon, the Oregon Railway & Navigation company, of which he was vice president; the Portland & Astoria Steamship company; the San Pedro, Los Angeles and Salt Lake Railroad company, the Southern Pacific company, the Southern Pacific Railway company, of which he was president; the Union Pacific Land company, of which he was president, and the Wells-Fargo & Co.

Mr. Cornish attended the theater last night and retired at about 11 o'clock apparently in perfect health. Today when Mr. Cornish's private secretary went to awaken him for some hours, while a superficial examination indicated that death had been due to heart disease, the doctor said there was a possibility that it had been caused by apoplexy.

The coroner's inquest was set for this afternoon after which the body will be sent to Orange, N. J., where the deceased resided. His office was at 120 Wall street, New York.

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New York Central rose five points on a few purchases and United States Steel by short spurs forced itself up to 65 1/2, the highest price ever touched by that stock. Many other prominent stocks rose 1 and 2 points over last night's closing.

There was no definite single piece of news to account for the extreme activity, but speculation apparently was stimulated by reports from all sections of the country of receipts of large orders by manufacturers, of rapid expansion in wholesale and retail lines and that large numbers of workers are being re-employed.

The big advance in New York Central was attributed to a rumor current in the street to the effect that H. Harriman soon is to become a factor in the control of that system. Neither confirmation nor denial of this report was to be had today.

The animated trading continued until the close, though considerable selling to realize profits developed in the closing hour. As a result the gains in some of the prominent stocks were wiped out but the substantial advances in some shares remained to the end. Prices were working upward again when the sound of the gong put an end to the trading for the week.

Harriman Is Silent.
New York, Nov. 7.—Edward H. Harriman was informed by those at his home at Arden, Orange county, this afternoon that he had been named to become an active factor in the management of the New York Central & Hudson River railway and that the price of the stock had advanced sharply on the strength of that rumor. He declined to discuss the subject.

TO KEEP ANNIS OUT.
Commandant of Fort Hamilton Issued Order for That Purpose.

New York, Nov. 7.—Stories of revelry in the army post at Fort Hamilton which have followed disclosures made in letters alleged to have been written by Mrs. Claudia Hains to her husband, Captain Peter C. Hains, Jr., were denied today by Lieutenant Colonel Henry Ludlow, who has been in command at the fort. Practically every officer who was stationed at Fort Hamilton during the time mentioned in Mrs. Hains' letters has been ordered to another and in many instances, a distant post. It was when questioned with reference to the transfers of officers that Lieutenant Colonel Ludlow took occasion to deny some of the statements made in Mrs. Hains' letters. These letters were written while Mrs. Hains was living in the officers' quarters at Fort Hamilton after her husband had been ordered to the Philippines.

"If any investigation was ever made by the war department of the reported revelries here, the investigation passed around me," said Colonel Ludlow, "and one ever asked me a question about it. That makes me more positive in my declarations that the revelations made by Mrs. Hains had nothing to do with the transfers of officers."

FOOTBALL WEATHER.
Temperatures Slightly Above Normal, With Light Wind Prevailing.

Weatherman Jennings' offering today for the Washburn-K. U. football game was all that could have been asked by the most ardent admirer of the sport. Just enough wind was blowing to keep the field free from dust and while the temperatures were a few degrees above normal for this season of the year they were not enough above the normal point to interfere with the work of the player.

On the other hand there was enough temperature in the atmosphere to keep the spectators in the bleachers comfortable throughout the game. The forecast indicates fair weather for tonight and Sunday with moderate temperatures for this part of the state. The following were the temperatures in Topeka since 7 o'clock this morning:

7 o'clock 39.11 o'clock 43
8 o'clock 42.12 o'clock 49
9 o'clock 48 1 o'clock 73
10 o'clock 65 2 o'clock 74

Weather Indications.
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